

**From:** [Oliver Orjiako](#)  
**To:** [Jeffrey Delapena](#)  
**Subject:** FW: Comment Letter - 2025 Clark County Comprehensive Land Use Plan  
**Date:** Tuesday, November 5, 2024 1:57:16 PM  
**Attachments:** [11052024.pdf](#)

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Hi Jeff,

For the record and public comment. Thank you.

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**From:** Harmon, Heather <Heather.Harmon@MillerNash.com>  
**Sent:** Tuesday, November 5, 2024 1:53 PM  
**To:** Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>  
**Cc:** Bremer, LeAnne M. <LeAnne.Bremer@MillerNash.com>; elh@jordanramis.com; shorenstein@schwabe.com; jamie.howsley@jordanramis.com; Christine Cook <Christine.Cook@clark.wa.gov>; karl\_j\_us@yahoo.com; jkbaker76@gmail.com; mbergthold@aol.com; Bryan Halbert <bryan@halbertconstruction.com>; jack@jackharrounconstruction.com; Steve C. Morasch <stevem@landerholm.com>; wogen5@msn.com; Jeffrey Delapena <Jeffrey.Delapena@clark.wa.gov>; Bryan.Snodgrass@cityofvancouver.us; claire.lust@ridgefieldwa.us; sam.crummett@cityofbg.org; amerrill@ci.lacenter.wa.us; apeters@cityofcamas.us; Mitch.Kneipp@cityofwashougal.us; noelle@biaofclarkcounty.org; ga@ccar.com  
**Subject:** Comment Letter - 2025 Clark County Comprehensive Land Use Plan

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Attached please find correspondence from LeAnne M. Bremer, Ezra L. Hammer, Stephen W. Horenstein, and James D. Howsley. Thank you.

**Heather Harmon**

Legal Assistant/Paralegal to LeAnne Bremer, Edward Decker, Kathryn Rasmussen, Beatrice Lucas, and Abigail Yeo (Pronouns: she/her/hers)

**Miller Nash LLP**

500 Broadway St, Ste 400 | Vancouver, WA 98660

Direct: 360.619.7013 | Office: 360.699.4771

[Email](#) | [Insights](#) | [Website](#)

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November 5, 2024

By Email: [oliver.orjiako@clark.wa.gov](mailto:oliver.orjiako@clark.wa.gov); [jose.alvarez@clark.wa.gov](mailto:jose.alvarez@clark.wa.gov)

Oliver Orjiako, Director of Community Planning  
Jose Alvarez, Program Manager  
Clark County Department of Community Planning  
1300 Franklin Street  
Vancouver, WA 98660

Dear Oliver and Jose,

On behalf of our clients, and the building and development community in general, we are submitting this comment letter into the record to be considered by the Planning Commission (copied) at their November 7, 2024 hearing on the land use alternatives to be studied in the draft environmental impact statement for the 2025 Clark County Comprehensive Land Use Plan.

The focus of this letter will be on the legal requirements the County must follow in this process specifically with respect to (1) the site-specific requests and the requirement and authority for the County to consider an alternative in the EIS that includes the site-specific requests, and (2) the requirement to undertake a County-wide natural resources lands study.

**Clark County Committed to Consider the Site-Specific Requests in the Plan Update**

For GMA planning, RCW 36.70A.130(2)(a) requires the County to establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 *that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the County*. "Updates" under this statute is defined to include annual reviews and the reviews occurring during this periodic comprehensive update process.

The court in *Stafne v. Snohomish Cnty.*, 174 Wash. 2d 24, 31, 271 P.3d 868, 872 (2012), emphasized the County's requirement to adopt procedures to consider updates to the land use plan:

As part of this review process, counties and cities are required to establish procedures for the public to annually suggest updates, proposed amendments, and revisions to the jurisdiction's comprehensive plan. RCW 36.70A.470(2).

Clark County has adopted procedures for updates to its comprehensive plan and now must follow them. Chapter 40.560.040 UDC sets forth the process for annual review applications that, if filed and complete, must be considered by the Planning Commission and Board of County Councilors consistent with RCW 36.70A.130(2). This does not mean the County must approve the requests, but it must at the very least consider them.

In a 2022 resolution, Clark County suspended annual reviews starting October 1, 2023, while it updated its comprehensive plan. The stated purpose of the suspension was because decisions on annual reviews would occur in the same year as the expected decision on the periodic comprehensive plan update (then expected by June 2025), which would violate the GMA provision that does not allow changes to the comprehensive plan more frequently than once a year except in limited circumstances. However, since suspension, there have been no property owner-initiated amendments to the comprehensive plan, whether through an annual review process or the comprehensive update. Accordingly, the County has not been in compliance with RCW 36.70A.130(2)(a) and its own code that requires annual reviews where proposed amendments *must* be considered by the County.

A number of property owners were content to delay filing annual review applications because of the County's representations that it would consider them in this process. Instead of accepting annual review applications, Clark County solicited site specific requests, with a deadline of March 15, 2024, creating the highly reasonable and legally sound expectation among property owners that these requests would be considered in this update in lieu of the annual review application process. What was the purpose of the deadline if not to create a finite list of requests that the County would consider, rather than have an open-ended process until adoption?

The County's website states:

As part of the 2025 Comprehensive Growth Management Plan update, Clark County Community Planning accepted site-specific comprehensive plan and zoning amendment requests through March 15, 2024. The application period is now closed. The next phase of the plan update process will be the creation of land use alternatives to be studied as part of the Draft Environmental Impact Statement (DEIS).

This statement says that the site-specific requests would be "part of" the update, that requests were made by "application," and that the next phase would be to wrap them into the DEIS. Furthermore, the County's website states this:

The map below is periodically updated to visually display the site-specific requests for comprehensive plan and zoning amendments *to be considered during the county's 2025 Comprehensive Growth Management Plan update*. [Emphasis added].

<https://clark.wa.gov/community-planning/2025-update-site-specific-requests>

Because the County suspended annual review applications, which applications must be considered by the County when the annual review process is in effect, the County is now required to consider owner-initiated requests in an alternative process under RCW 36.70.130(2)(a), as the County represented it would do.

As to SEPA, the County included the EIS timeline multiple times in published materials that identified property owner requests as part of the EIS process:



- Hire environmental analysis consultant
- Property owner submittal for comprehensive land use changes
- Outline/Scope the range & types of issues studied for the Environmental Impact Statement (EIS)
- Review and select Growth Alternatives for Draft Environmental Impact Statement (DEIS)
- Input on County Comprehensive Plan text and policies & Title 40 revisions, if needed

WAC 365-196-620 requires the integration of the SEPA process with the creation and adoption of comprehensive plans and development regulations. Because the County is required to incorporate site-specific requests in the periodic update under a process it developed under RCW 36.70A.130(2), and due to its representations that it would do so, then an alternative in the EIS must include the site-specific requests so that their impacts can be properly studied and considered.

### **The County Has the Authority to Add a Site-Specific Alternative to the DEIS at this Stage**

As argued above, the County must consider site-specific requests it solicited in the DEIS, and it is not too late to do so. The whole purpose of seeking comments on the DEIS was to define the scope. WAC 197-11-408. Some of those who commented on the scoping notice asked for the site-specific requests to be considered in the DEIS. See *e.g.* response to the scoping notice, public comment #36183791. This is not a new request at the 11<sup>th</sup> hour. What is the purpose of the hearings on the land use alternatives for the DEIS if not to further define the alternatives? If they are already baked into three alternatives County staff has developed, public participation is meaningless. We are in the middle of the scoping process.

Moreover, the County never released any draft maps prior to the scoping notice comment period closing. Instead, the County indicated that it had identified three potential alternatives without details (no action, City proposals, and the County proposal). However, after the comment period closed, maps were shared, then there were further changes to the maps, and now there are multiple City alternatives. The County itself has changed its draft Vancouver GMA map three times since closing the comment period and more changes may be forthcoming. Because the alternatives have been in flux and are still in flux, proposed changes to the alternatives offered through public comment should be considered, and, if appropriate or required, added to the alternatives in the DEIS. If rescoping is necessary, it is because the County did not adequately define the alternatives now or soon to be under consideration prior to the

end of the scoping public comment period. Admittedly, this may have been partially due to cities not providing the County with their preferred alternatives until recently (with additional alternatives still possible). The County has opted to undertake an expanded scoping process by using meetings, workshops, and open houses to help define the scope of the DEIS. Use of expanded scoping is intended to promote interagency cooperation, public participation, and innovative ways to streamline the SEPA process. WAC 197-11-410. During this scoping process that we are still in, the County must encourage and assist public participation and make that participation meaningful by considering changes to the alternatives proposed by staff at the upcoming Planning Commission hearing.

### **The County is Required to Conduct a County-wide Resource Lands Study**

State law requires the County to follow the minimum guidelines established by the Department of Commerce in designating agricultural lands and forestlands. RCW 36.70A.050(1). The County's comprehensive plan is also subject to continuing review and evaluation to ensure that the plan meets the requirements of GMA. RCW 36.70A.130.

One Commerce regulation states:

In classifying, designating and de-designating agricultural resource lands, **counties must conduct a comprehensive countywide analysis** consistent with WAC 365-190-040(10). Counties and cities should not review resource lands designations solely on a parcel-by-parcel basis. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

WAC 365-190-050(1).

A similar regulation in WAC 365-190-060 applies to forestlands.

Further, WAC 365-190-040(10)(c) states:

(c) Reviewing natural resource lands designation. In classifying, designating and de-designating natural resource lands, **counties must conduct a comprehensive countywide analysis**. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel basis. Designation amendments should be based on consistency with one or more of the following criteria:

- (i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (iii) An error in designation or failure to designate;
- (iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

There is no equivocation in the regulations. The County is required to periodically review, and if needed, revise its policies and development regulations regarding natural resource lands to ensure these policies and regulations comply with the requirements of GMA (e.g. agricultural lands are capable of being used for agricultural production and have long-term commercial significance). In this comprehensive update, the County must meet the minimum guidelines applicable to natural resources lands and conduct the County-wide study according to the above rules.

Lastly, the County will not consider changes to natural resource land designations during the annual review process because of the requirement that these not be considered on a site-specific basis. Therefore, the only time these designations can and must be considered is during this comprehensive update, and to consider them, the County must commission and consider a County-wide study.

We respectfully request that staff and the Planning Commission recommend to the Board of County Councilors the following:

1. Add a land use alternative in the DEIS that incorporates the site-specific requests filed by March 15, 2024.
2. Commission a County-wide natural resources lands study pursuant to WAC 365-190-040(10)(c).

Thank you for your consideration.



LeAnne M. Bremer  
Miller Nash LLP



Ezra L. Hammer  
Jordan Ramis PC



Stephen W. Horenstein  
Schwabe



James D. Howsley  
Jordan Ramis PC

cc: Christine Cook, Deputy Prosecuting Attorney ([Christine.Cook@clark.wa.gov](mailto:Christine.Cook@clark.wa.gov))  
Karl Johnson, Chair, Clark County Planning Commission ([karl\\_j\\_us@yahoo.com](mailto:karl_j_us@yahoo.com))  
Jeremy Baker, Clark County Planning Commission ([jkbaker76@gmail.com](mailto:jkbaker76@gmail.com))  
Mark Bergthold, Clark County Planning Commission ([mbergthold@aol.com](mailto:mbergthold@aol.com))  
Bryan Halbert, Clark County Planning Commission ([Bryan@HalbertConstruction.com](mailto:Bryan@HalbertConstruction.com))  
Jack Harroun, Clark County Planning Commission ([jack@jackharrounconstruction.com](mailto:jack@jackharrounconstruction.com))  
Steve Morasch, Clark County Planning Commission ([stevem@landerholm.com](mailto:stevem@landerholm.com))  
Eldon Wogen, Clark County Planning Commission ([wogen5@msn.com](mailto:wogen5@msn.com))

Jeffrey Delapena, Planning Commission staff ([Jeffrey.delapena@clark.wa.gov](mailto:Jeffrey.delapena@clark.wa.gov))  
Bryan Snodgrass, City of Vancouver ([bryan.snodgrass@cityofvancouver.us](mailto:bryan.snodgrass@cityofvancouver.us))  
Claire Lust, City of Ridgefield ([claire.lust@ridgefieldwa.us](mailto:claire.lust@ridgefieldwa.us))  
Sam Crummitt, City of Battle Ground ([sam.crummitt@cityofbg.org](mailto:sam.crummitt@cityofbg.org))  
Angie Merrill, City of LaCenter ([amerrill@ci.lacenter.wa.us](mailto:amerrill@ci.lacenter.wa.us))  
Alan Peters, City of Camas ([apeters@cityofcamas.us](mailto:apeters@cityofcamas.us))  
Mitch Kneipp, City of Washougal ([Mitch.Kneipp@cityofwashougal.us](mailto:Mitch.Kneipp@cityofwashougal.us))  
Noelle Lovern, BIAW ([noelle@biaofclarkcounty.org](mailto:noelle@biaofclarkcounty.org))  
Justin Wood, Clark County Association of Realtors ([ga@ccar.com](mailto:ga@ccar.com))